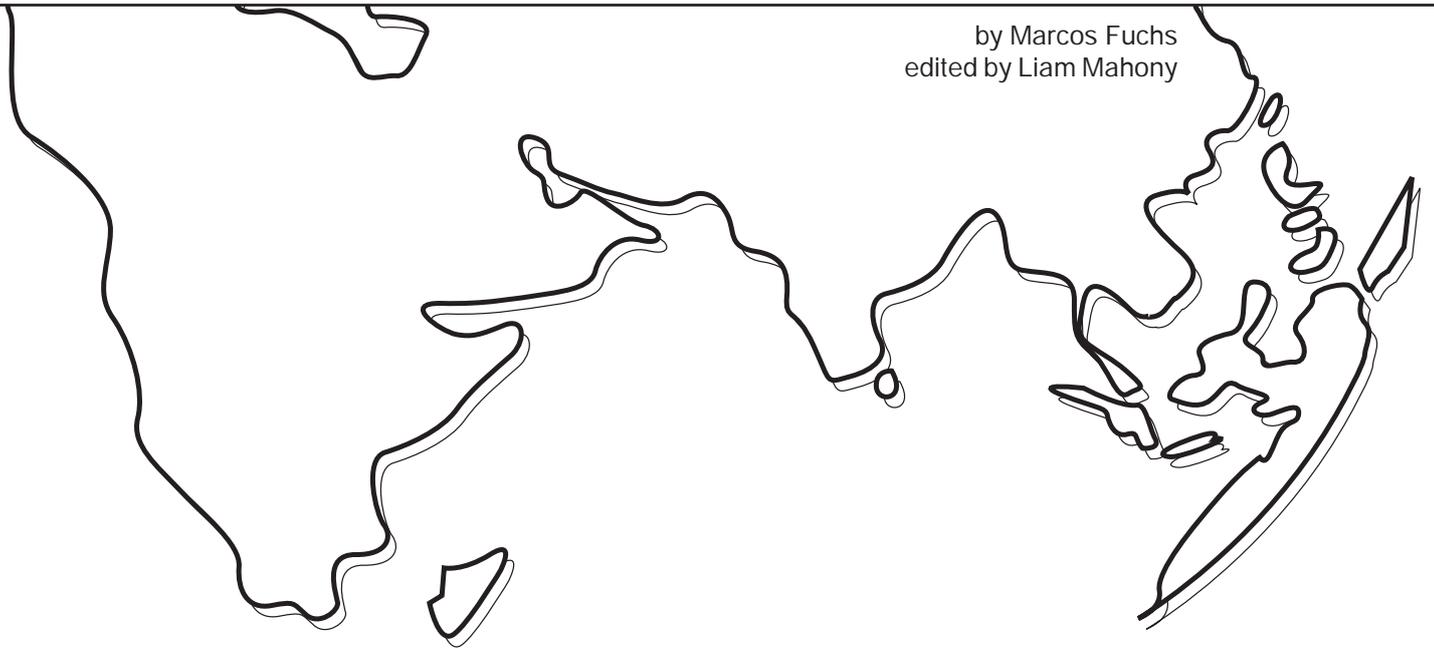


## **Expanding Access to Justice**

The Instituto Pro Bono in São Paulo

by Marcos Fuchs  
edited by Liam Mahony



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- 4 Author biography
- 5 Letter from the New Tactics project manager
- 6 Introduction
- 7 Building the Instituto Pro Bono
- 11 Strategies for creating a pro bono organization
- 13 Conclusion



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### Marcos Fuchs

Marcos Fuchs is the executive director of Instituto Pro Bono and administrative director of Conectas Human Rights. He has taken the lead in introducing the culture of pro bono legal services in Brazil and is currently promoting the expansion of the pro bono culture to other areas of Brazil and other countries.

Mr. Fuchs holds a law degree from the Catholic University of São Paulo; a master's degree in marketing and business from the School of Propaganda and Marketing in São Paulo, the leading higher-education institution in the area; and a specialized degree in commercial law from Boston University Law School, in Boston, Massachusetts, USA. He has worked as an attorney from 1989 to 2001 and as the director of the Hinckley Group of Associated Companies. He is also the director of the Community Channel at the São Paulo Branch of the Brazilian Bar Association.

### Instituto Pro Bono

The Instituto Pro Bono is a nonprofit organization founded in 2001 in order to increase access to justice in Brazil through the promotion of social responsibility in the legal sector. The main objective of Instituto Pro Bono is to persuade individual lawyers and law firms to provide free legal services for nonprofit organizations and people in need. Moreover, IPB aims to institutionalize pro bono services among Brazilian law firms as well as to legalize pro bono activity in the whole country. We would like to

thank the United Nations Foundation and Ford Foundation for their partnership in this effort. This support has played a crucial role in creating the Instituto Pro Bono.

**IPB**  
INSTITUTO  
PRO BONO



September 2004

Dear Friend,

Welcome to the New Tactics in Human Rights Tactical Notebook Series. In each notebook a human rights practitioner describes an innovative tactic that was used successfully in advancing human rights. The authors are part of the broad and diverse human rights movement, including nongovernment and government perspectives, educators, law enforcement personnel, truth and reconciliation processes, women's rights and mental health advocates. They have both adapted and pioneered tactics that have contributed to human rights in their home countries. In addition, they have used tactics that, when adapted, can be applied in other countries and other situations to address a variety of issues.

Each notebook contains detailed information on how the author and his or her organization achieved what they did. We want to inspire other human rights practitioners to think tactically — and to broaden the realm of tactics considered to effectively advance human rights.

Until a few years ago, there were no legal firms in Brazil that offered free services to people in need. The Pro-Bono Institute has created a new legal tradition in São Paulo, convincing major law firms to donate their legal services and connecting them with NGOs in need of legal services. The Institute has recruited about 140 lawyers and is offering a variety of free services to all kinds of NGOs, including support for important human rights cases. It has achieved a rapid change in attitude in the legal community and pro bono work has become steadily more popular. This workshop demonstrated how to develop pro bono services in the professional legal community to give NGOs and victims of human rights abuse access to more frequent and better legal services.

The entire series of Tactical Notebooks is available online at [www.newtactics.org](http://www.newtactics.org). Additional notebooks are already available and others will continue to be added over time. On our web site you will also find other tools, including a searchable database of tactics, a discussion forum for human rights practitioners and information about our workshops and symposium. To subscribe to the New Tactics newsletter, please send an e-mail to [newtactics@cvt.org](mailto:newtactics@cvt.org).

The New Tactics in Human Rights Project is an international initiative led by a diverse group of organizations and practitioners from around the world. The project is coordinated by the Center for Victims of Torture and grew out of our experiences as a creator of new tactics and as a treatment center that also advocates for the protection of human rights from a unique position — one of healing and reclaiming civic leadership.

We hope that you will find these notebooks informational and thought-provoking.

Sincerely,

A handwritten signature in cursive script that reads "Kate Kelsch".

Kate Kelsch

New Tactics Project Manager

## Introduction

The expression *pro bono publico* is Latin for "for the public interest." The expression is now most commonly used to refer to lawyers or other professionals who offer free services to assist people in need or to promote the public interest. By institutionalizing mechanisms to facilitate such public service, the basic human urge to volunteer time to help those in need can become an integral part of the ethic of an entire profession. The pro bono relationship provides a great benefit to both parties: The clients receive services they might not otherwise afford, while the lawyer receives the satisfaction of using his or her skills for a good cause.

As a result of this mutual interest, in some countries special institutions have been created to promote free legal assistance for poor people and charitable non-profit organizations. Institutionalized pro bono activities are very strong in places like the United States, Australia and Europe, where most of the top law firms have their own pro bono projects providing assistance to the poor, to immigrants and to NGOs.

The institutionalization of pro bono services has a direct benefit for human rights. For one thing, human rights NGOs themselves can benefit from such free services. Secondly, the pro bono movement is responding directly to an often-denied human right: the right to a lawyer. Volunteer lawyers are often interested in providing assistance to victims of abuses. In Brazil some of the most respectable NGOs started their activities during the dictatorship (1964-1989) by assisting victims of the repressive government. Many lawyers were providing free legal support to people detained for political reasons.

Unfortunately, there is huge potential being lost. There is a general openness in the legal profession to offering free services to those who need it most. Yet a great many countries with significant and strong legal establishments have no institutionalized process

by which people in need can be linked to volunteer lawyers. Despite the Brazilian experience of legal support to victims of repression, until we created the Instituto Pro Bono in 2001 there was no institution with a mandate and capacity to bring together lawyers offering their services with organizations who might need them.

More importantly, there was no built-in ethic or professional expectation that lawyers should offer such services. Unlike in the United States, where it is a basic assumption of the legal profession that a firm will offer a certain percentage of its time pro bono, in Brazil and many other countries this is unheard of. Voluntary service is a purely personal matter, not related to the firm or to the profession as a whole.

The Instituto Pro Bono was created to change this reality: to institutionalize the ethic of pro bono service within the Brazilian legal profession and to create an efficient system for bringing together pro bono lawyers with clients in need. In the long run, we believe that this step will increase access to justice for all Brazilians and assist many worthy NGOs. We want to share this experience with you, as we believe the institutionalization of pro bono services is a step that could have a similarly positive effect in many other countries where it is not yet common practice.

## Access to justice in Brazil

Brazil is a remarkably inequitable society, where access to justice is a privilege of the affluent. In this very large country there is great wealth and great poverty: The richest 10 percent control 50 percent of the wealth while the poorest 50 percent control 10 percent. Millions of Brazilians receive little or no benefit from the justice system. The search for solutions to many of society's problems, from crime to human rights to economic development, are hampered by impediments to accessing the justice system.

Article 5, LXXIV of the Brazilian Federal Constitution states that the government should provide free legal aid for Brazilians and foreign persons living in the country. This representation has to be provided by the government at both federal and state levels, for both criminal and civil proceedings. In practice, even though free legal aid has been codified in Brazilian law for many decades, many of the Brazilian states have not even organized their public defense departments.

Even São Paulo, the most developed state in Brazil, has not created a public defense department, and legal defense must be provided by other departments, such as the State



Pro-democracy demonstration in Brazil.

Attorney's Offices. Unfortunately these departments cannot meet the demand, and millions of Brazilians are left without any legal support. In addition, free aid is only offered to those who can prove their level of poverty, and the threshold is very low (about US\$100 per month). The poor who earn slightly more than this amount have no access to any kind of legal assistance.

The legal profession, through the Brazilian Bar Association, works with the State Attorney's Offices to provide legal services to those who cannot afford them. In São Paulo, the State Public Attorney's Office has a cooperation agreement with the state bar association whereby the Attorney's Office transfers some funds to the state bar, which provides free legal aid to those would not be able to afford private lawyers. This partnership, however, is also grossly insufficient. It must be deepened to engage lawyers more effectively on strategic social issues and to expand access.

### Building the Instituto Pro Bono

Different strategies have been tried to remedy the lack of access to the justice system. One of them was the performance of pro bono services by private law firms. This practice, however, was sparse, very limited and decentralized. For that reason, more organized discussions were begun by a few people in the legal community.

This small group organized a seminar in 2001 to discuss how to promote pro bono legal services in Brazil. One of the key speakers was Daniel Grunfeld, then president and CEO of the Public Counsel Law Center in Los Angeles. Grunfeld's presence and the work of his organization were undoubtedly the dominant inspiration for the creation of the Instituto Pro Bono.

Oscar Vilhena and a group of advocates and students working with him took on the idea of replicating something similar to that North American initiative in Brazil. That same year, a full-time staff person joined the project to start a more planned and intense initiative among law firms, the Bar Association and potential financial supporters. In July 2001, Marcos Fuchs, the current executive director of IPB, joined the project.



Launch of Instituto Pro Bono, December 2001.



From left to right: Miguel Reale, Jr., president of the board of IPB and former minister of justice; Milu Vilela, president of the Year of the Volunteer Campaign; Carlos Miguel Adair, president of the São Paulo Branch of the Brazilian Bar Association.

Mr. Vilhena and Mr. Fuchs began inviting some important legal professionals they knew to be part of the project. Partners in top law firms were invited to collaborate, a step that facilitated later support from these law firms after pro bono activity was legalized. (Before the initiative began, the Brazilian Bar Association prohibited it. See below.)

Eventually, 37 legal professionals, including lawyers, public attorneys and law professors, created the Instituto Pro Bono of São Paulo. The main objective of the organization was and still is the improvement of access to justice in Brazil by stimulating social responsibility in the legal sector. IPB is a public interest organization, under Brazilian law 9.790/99.

Pro bono engages lawyers in strategic social and legal governance issues that would otherwise not be addressed. It has begun to be conceptualized in Brazil as an important strategy for improving access and promoting more effective application of the law. Pro bono service, as such, was never before institutionalized in the legal system in the country.

Building credibility within the legal profession was the first important step. Support from Daniel Grunfeld, the Public Counsel of Los Angeles, the Cyrus Vance Center for International Justice Initiatives and the Association of the Bar of the City of New York, gave essential credibility to the IPB effort.

The Cyrus Vance Center, represented by Ms. Joan Vermeulen, helped IPB to contact U.S. law firms and nonprofit organizations that could provide important information and contacts. Our external supporters put us in contact with the Colegio de Abogados of Buenos Aires, Argentina, and with the Fundación Pro Bono of Santiago, Chile, who organized, respectively, the first and the second International Pro Bono Seminars. The importance of the International Seminar will be demonstrated below.

### OVERCOMING RESISTANCE

When we started, the practice of free legal assistance was considered illegal and unethical by the Brazilian Bar Association and by the state bar associations, on the grounds that lawyers and law firms might do pro



## Pro Bono Clients

Some NGOs that have been assisted by IPB pro bono lawyers:

Ação dos Cristãos para Abolição da Tortura (torture)  
Agência de Notícias dos Direitos da Infância (children rights)  
Associação Ação Cultural Claridade (traditional culture)  
Associação Brasileira de Brinquedotecas (children rights)  
Associação Cheiro de Capim (abandoned children)  
Associação Civil Obras Sociais Santa Cruz (abandoned children)  
Associação Comunitária Sítio dos Francos (housing problems)  
Associação de Anemia Falciforme do Estado de São Paulo (health issues)  
Associação de Diabetes Juvenil (diabetes)  
Associação de Mães da Criança e do Adolescente em Risco (children rights and juvenile offenders)  
Associação de Vida e Amizade (health issues)  
Associação dos Moradores de Bairro Vila Nova União (housing problems)  
Associação Filantrópica de Mães do Pimentas (children rights)  
Associação Indígena Mavutsinin (indigenous issues)  
Associação Nova Idade (elderly)  
Associação Promotora de Instrução e Trabalho para Cegos (blind people)  
Associação Reciclázaro (abandoned children)  
Carminha Associação para Reabilitação do Excepcional (disabled people)  
Casa do Amparo (abandoned children)  
Centro de Profissionalização de Adolescentes (professionalization of adolescents)  
Centro de Valorização da Vida (health issues)  
Educandário Dom Duarte (abandoned children)  
Grupo Brasil de Apoio ao Surdocego e ao Múltiplo Deficiente Sensorial (disabled people)  
Instituto de Apoio à Criança e ao Adolescente com Doenças Renais (health issues)  
Instituto de Recuperação e Natação para Crianças (promotion of sports for poor kids)  
Instituto Therapon (psychological assistance for victims of crimes)  
Programa Social Gotas de Flor com Amor (abandoned children).

bono work with the purpose of capturing new clients through unfair competition. São Paulo State Bar Association directly resisted the *pro bono* concept, as approximately 33,000 of its members are paid by the state government to provide legal defense for poor people.

To overcome this problem we worked to create a resolution that would allow Brazilian lawyers to provide pro bono work legally. The São Paulo State Bar created the Pro Bono Working Group, composed of members of the Ethics and Discipline Tribunal as well as board members of the Instituto Pro Bono.

The Working Group decided to file a petition before the São Paulo state ethics tribunal, which required an advisory opinion on the issue of pro bono services. The petition was signed by the largest law firms in the country and by prominent jurists. These people formed a coalition that would press the Bar for the regulation of pro bono services.

After a few meetings and some deep discussion, the São Paulo State Bar Association was finally convinced that pro bono activity could be totally ethical and should be regulated by the local bar associations.

As a result, the state bar association enacted the Pro Bono Resolution (appendix 1), legalizing pro bono practice in the state of São Paulo. The resolution allows lawyers and law firms to provide free legal assistance and representation for poor nonprofit organizations. The practice of pro bono work for individuals is still prohibited. However, the former minister of justice, Mr. Miguel Reale, Jr., who is also the president of our board, is working with us and with the president of the national bar association to create pro bono regulations for Brazil that would allow lawyers and law firms to do pro bono work for both NGOs and individuals throughout Brazil.

### EXPANSION AND RESULTS

We started with fewer than 40 volunteer lawyers and no formal support from any law firm in Brazil. In addition, our potential clients were not aware of pro bono services. We had to publicize our efforts, let lawyers know how to volunteer and let NGOs know how they could benefit. We created a web site ([www.probono.org.br](http://www.probono.org.br)) where people can learn about pro bono work. Lawyers can fill out a volunteer form, providing contact information, the kinds of legal services they want to provide, the type of NGO they would like to assist, etc.

In addition to the web site, we did as much networking as we could among lawyers and NGOs in order to spread the pro bono concept.

Our first client was the Professor Domingos Delácio Women's Health Home Project, a partnership with the

■ LEGISLAÇÃO

# OAB critica a prestação de advocacia gratuita

Pareceres da Ordem questionam prática ainda não regulamentada

Controversy over pro bono work, as reported in the media.

Federal University of São Paulo, the Studies Center of São Paulo Lawyer Entities and the Central and Latin American Committee for the Defense of Women. The project provides multidisciplinary assistance to women who have been sexually victimized and involves the efforts of physicians, nurses, psychologists, psychiatrists and sociologists. The Instituto Pro Bono provides legal assistance to the victims of sexual violence. We have a law student intern who works full time on this project helping the victims to communicate with the police and to deal with criminal proceedings to investigate the crimes. This example shows how individuals can benefit from our services, even though the formal client is an NGO.

The Instituto Pro Bono grew rapidly and gained credibility in 2002 and 2003. We have more than 150 individual lawyers and 10 law firms as volunteers. We have provided legal aid for more than 70 NGOs. Those NGOs have received assistance with administrative issues, civil suits, contracts, taxes and labor issues. Most of the NGOs needed help registering legally with the government. Litigation cases represent less than 10 percent of the cases, but this area is growing as the concept of pro bono work develops and get more publicity.

We have assisted NGOs working with juvenile offenders, abandoned children and people with special needs, such as blind and deaf associations. We have also assisted NGOs that work with environmental issues or indigenous communities and organizations founded during the dictatorial government to stand up to repression and crimes of torture.

## IMPACT OF PRO BONO WORK: THE QUILOMBOS CASE

Instituto Pro Bono has worked in partnership with the Palmares Foundation to attain land rights guaranteed under Brazilian law for *quilombos*—communities of descendants of slaves who were in principle given communal land but who, in practice, do not enjoy these rights. The Palmares Foundation is part of the Brazilian Federal Government and their mission is to guarantee that descendants of African slaves get their rights.

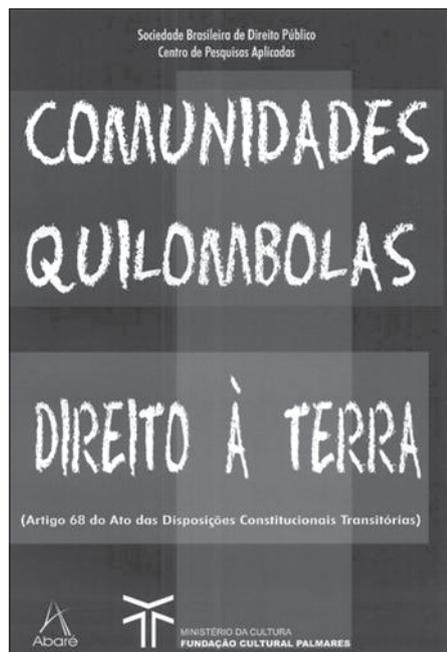
Through our liaison, a top law firm in São Paulo helped the foundation shape the work of a team of rural lawyers into a landmark study of the legal rights of *quilombos*. On the basis of this, the government is now reviewing the *quilombos* case and the World Bank has expressed interest in assisting the government in the realization of these rights. This case will provide tools and legal definitions that can potentially be used by thousands of landless people in Brazil to secure their rights.

*“The present publication was only possible with the effort from the Instituto Pro Bono... It concerns an area of law that could be a catalytic key for study, research, petitions, policy and decisions to respect the claims for areas occupied by remnants of quilombos.”*

(From the preface of *Comunidades Quilombolas – Direito à Terra*, or *The Quilombos* case.)

## IMPACT OF PRO BONO WORK: LEGAL SUPPORT TO INDIGENOUS COMMUNITIES

In a landmark case, the indigenous organization Associação Terra Indígena do Xingu (Xingu Land Association) asked the Instituto Socioambiental (Brazilian Environmental Institute) to mediate negotiations with a Brazilian cosmetic company called Natura, regarding an agreement to purchase a vegetal oil produced by the indigenous association. The agreement also included provisions regarding the use of images of members of that indigenous group both on product labels and in advertisement campaigns. The Brazilian Environmental Institute asked us to provide a legal opinion on the extent of image rights in the case, as well as the amounts to be paid. The main question was whether only the individuals whose images were used should be compensated or the whole community should.



Publication on the Quilombos case.



The legal opinion was groundbreaking because it reviewed some legal aspects of the exercise of personality rights by indigenous peoples in Brazil for the first time. According to the legal opinion, Natura wanted to use the indigenous images to symbolize the “natural,” the “singular,” and the “genuine,” and to attach those attributes to its product. The volunteer experts concluded that only the representation of the indigenous individual as part of a community would have the effect expected by Natura. Therefore, the personality right in question was not an individual right, but a collective one to which the whole Xingu indigenous community was entitled. The compensation relating to its use should, consequently, be paid to the whole community.

### IMPORTANCE OF NETWORKING

As the pro bono model develops, we are becoming a reference point for the creation of other pro bono institutes. For example, three other initiatives are now under way in Brazil, two in the south (Paraná and Rio Grande do Sul), and one in the northeast (Maranhão). Chile, Argentina and South Africa are among other countries also advancing pro bono initiatives and with whom we will forge strong links. As we start to interact with these new initiatives, we are creating a potentially powerful international legal network that will strengthen new initiatives. There is also the potential to collaborate with lawyers in this network to make better use of the United Nations conventions and legal bodies.

As the first organization of our kind in Brazil, we had to go overseas to learn from other organizations that had expertise in pro bono and social responsibility. The Public Counsel of Los Angeles and the Cyrus Vance

Center for International Justice Initiatives helped us approach the major law firms of São Paulo. They also helped us create a system for managing volunteer lawyers. Our local partners from South America, the Fundación Pro Bono of Chile and the Colégio de Abogados of Buenos Aires, Argentina, also played a very significant role in IPB’s development.

### INSTITUTO PRO BONO’S MODEL

The format we chose was largely influenced by models developed abroad by pro bono and public service law organizations. Due to initial limitations in staff size and resources and the limitations imposed by the prohibition on free legal services, it was agreed that the IPB would be a cross between a public service practice and a clearinghouse for hours provided by external lawyers associated with the Institute. At the same time, the Institute would carry out lobbying activities and awareness programs to create openness to change in the legal community and influence the Bar to change its position on pro bono services.

To facilitate the work and reporting activities in the organization, an informal and loose internal arrangement of activities was created, as follows:

**Managing volunteer hours.** This was the foundation of the Institute: to create a structure that would connect potential beneficiaries and sponsors of free legal services. The Institute manages a “bank” of volunteer hours donated by attorneys and law societies to nongovernmental organizations. Today, many of the largest and most influential law firms in the country donate a considerable number of hours to the Institute.

The following messages from NGOs we have worked with demonstrate the impact of our work and the great need for it among NGOS.

*“Dear Marcos Fuchs,*

*On behalf of our executive director, we would like to thank you for all your support regarding our case involving the registration of our trademark. Instituto Pro Bono’s attention and the competence of its team of professionals were of fundamental importance for the success and solution of our problem.”*

(From Agência de Notícias dos Direitos da Infância)

*“We would like to thank you so much for all the help you gave us. Thanks a lot! We’re not exaggerating, we were really in need of someone to help us in our cause.”*

(From Projeto Faduli)

*“Thank you for your attention and for the readiness of your answer. It makes me really glad and grateful to know that the Instituto Pro Bono will help us with the process of establishing our project legally.”*

(From Projeto Sala 5)

*“We finally got our registration! A huge kiss for all of you who really cooperated with the development of our project. We could not have done it without your help. We are looking forward to your visit. Thanks so much for all your attention.”*

(From Projeto Cala a boca já morreu)

**Identifying law firms.** Our strategy here is very simple: events, our web site and good contacts with the Studies Center of São Paulo Lawyer Entities, which has created a Pro Bono Committee to help us promote our project. Some of the largest law firms in Brazil, such as Pinheiro Neto, Tozzini Freire, Mattos Filho, Demarest & Almeida and Machado Meyer have provided free legal assistance through the project.

We always try to match volunteer lawyers with cases that match the areas of specialization on their registration forms so that lawyers will have cases on subjects with which they are familiar.

**Identifying NGOs.** We decided to limit the number of cases we took on in the first year and so paid special attention to how we selected cases. We did not adopt fixed criteria, but reviewed all requests individually. At the same time, we identified particular areas of interest and important partner organizations that would help us consolidate our position in civil society and the legal community.

In order to qualify for assistance organizations must provide detailed information about their needs, structure and legal status. Representatives of the Institute or volunteer lawyers also visit the organization before offering services. This ensures that the organizations are in good standing and that the lawyers fully understand what services they need in advance.

#### **WHY DO LAWYERS DO PRO BONO WORK?**

First, pro bono work helps firms recruit and retain good lawyers. As firms have gotten larger it has become increasingly difficult to maintain collegiality. Pro bono work offers an opportunity to collaborate, which gives lawyers special satisfaction and shared pride. A satisfied lawyer has a better chance of being a good lawyer, and that sense of satisfaction will be reflected in the totality of the lawyer's work.

Second, pro bono work provides good training experiences for associates and can often be more challenging than much of what a junior associate does at a firm. Pro bono work offers give young associates the opportunity for accelerated professional development and a chance to vary their workload, achieve greater autonomy and work in new forums. They are able to work with a wider range of lawyers at the firm and may be able to participate more actively in the life of the firm through the pro bono committee. Pro bono work can make a real difference in associates' development at a firm, giving them an opportunity to shine and to gain an early reputation for both the quality of their work and their commitment to the practice of law.

Third, pro bono work helps to address issues of declining morale and job satisfaction that lawyers may experience during their professional lives. The pressing

social issues of the day do not come up frequently in the practice of a large law firm. As a result, many lawyers find themselves less engaged in larger public matters. Pro bono work fills the need that many lawyers have to contribute to society. It has the potential to offer constructive engagement with pressing social issues. It is important to demonstrate that pro bono work can support human rights. Most lawyers would welcome the opportunity to support the human rights movement and disadvantaged people.

Fourth, pro bono work is good for the standing of the legal profession and the legal system in the eyes of the general public. As commentators in the United States have noted, episodes of anti-lawyer feeling are generally about more than lawyers, and reflect people's responses to the legal system and the broader society in which it is set. To maintain public confidence in the integrity of the legal system and the practice of law, the profession must ensure meaningful access to justice. A fair and just legal system cannot exist if large segments of the profession have no direct contact with the problems of the poor and disadvantaged.

### **Strategies for creating a pro bono organization**

#### **GET BAR ASSOCIATIONS' SUPPORT**

As you can see from the difficulties we had in São Paulo, you must first verify whether pro bono activity is legal or not. Be sure to contact your local bar association and consider contacting some foreign bar associations. Foreign associations could give you guidance and help you encourage your local bar to regulate pro bono work. In our case, the Association of the Bar of the City of New York played a very significant role. Members of our local bar association were impressed by the fact that such an important local bar welcomed pro bono services.

As our case showed, careful and diplomatic negotiation with the bar was able to overcome resistance, and we are confident that pro bono work will be officially recognized throughout Brazil.

#### **ENCOURAGE THE INVOLVEMENT OF IMPORTANT PLAYERS**

A good strategy for confronting resistance as well as for promoting the concept as a whole is to convince some important players to be part of your organization. We successfully invited two former ministers of justice to be on our board. We also invited internationally known legal figures to Brazil to promote the idea, such as the president of the Pro Bono Committee from the Colegio de Abogados of Buenos Aires, Argentina, and the executive director of the Fundación Pro Bono of Santiago, Chile. The credibility of such people can strengthen your organization; they might have a positive influence within the local and national bar associations; and they can open doors to leading law firms.



## APPROACH LEADING LAW FIRMS

In most places there are a few dominant law firms who are well worth the effort to involve in pro bono work. For one thing, they are large, with a significant number of potential volunteer lawyers. These firms also often provide leadership within the legal community, and their involvement will encourage other firms to join as well. The adoption of institutional pro bono policies by law firms and corporate in-house counsels is an important step towards strengthening social responsibility among lawyers. These policies are still a recent phenomenon in Brazil but more and more are being instituted.

To encourage this it is helpful to share successful national and international pro bono experiences with law firms and in-house counsels and to demonstrate the benefits to firms and corporations. We also try to help them understand how to recruit volunteers and how to manage relationships with NGOs.

Why would a huge and rich law firm support pro bono work? For one thing, the individual lawyers in these firms all have the same reasons outlined above to be interested. And as a company, a law firm must also put a value on job satisfaction and motivation. Firms are in competition with each other in at least two ways: They compete for the best lawyers and the job satisfaction gained doing pro bono work could be of some competitive value; secondly they compete for clients, and pro bono work can improve their marketing image.

Most of the top law firms have representation or at least good partners in places like the United States and Europe. You can take advantage of this and show the

top law firms in your country that their partners elsewhere are already doing pro bono work. Once you have some large firms on board, you can use this to reinforce your approaches to other firms.

It might seem unlikely at first that these large firms would bother to support pro bono work. But in fact, U.S. studies show that the larger a firm is the more likely it is to be willing to permit pro bono activity.

Large firms are also more likely to analyze the economic implications of a positive public image. Our experience in São Paulo was extremely positive. First, because some board members of IPB were also partners in top law firms, like Pinheiro Neto, Mattos Filho and Demarest & Almeida. Those members helped IPB to approach others law firms and most of the firms welcomed the idea. IPB now has formal support from many law firms and we have worked directly with more than ten of the largest firms in the city. Some of them have not been taken advantage of yet due to a lack of cases. At this point we have more volunteer lawyers than NGOs to assist.

## SPREADING AND LEGITIMIZING THE PRO BONO CONCEPT:

### THE III INTERNATIONAL PRO BONO SEMINAR

Seminars and conferences are fundamental for spreading the idea of pro bono work, especially in countries like Brazil, where volunteer work is not really a tradition. Such events can bring together local lawyers and lawyers from other countries where pro bono work is taken for granted. This contact builds credibility, which can make people more receptive to the idea. Moreover, those events are very important places to address ethical and administrative issues. In order to convince someone do work for free on public interest cases you need to show how significant that work is and how it can be organized in a firm or in a company.

On December 4 and 5, 2003, IPB organized the III International Pro Bono Seminar in partnership with the Cyrus Vance Center for International Justice Initiatives (part of the Association of the Bar of the City of New York), the São Paulo Lawyers Association and the Fundação Getúlio Vargas, one of the most respected universities in Brazil. The Seminar was the third international meeting of pro bono lawyers—the first two were held in Argentina in 2001 and in Chile in 2002.

All three international seminars were formally supported by the Cyrus Vance Center, which has consistently helped put South American organizations in touch with U.S. law firms and pro bono organizations. Those events gave credibility and popularity to organizations such as IPB in Brazil and Fundación Pro Bono in Chile. The participation of U.S. firms and nonprofit organizations has always been vital to strengthening

1 *Making the Business Case for Pro Bono*, by Esther F. Lardent, Instituto Pro Bono, Washington D.C., 2000.



Application forms.

the dialogue with local bar associations and local law firms.

It is worth describing some of the aspects of this conference in detail, as they illustrate a number of the approaches that are important to building a new consensus in the legal community in favor of pro bono work:

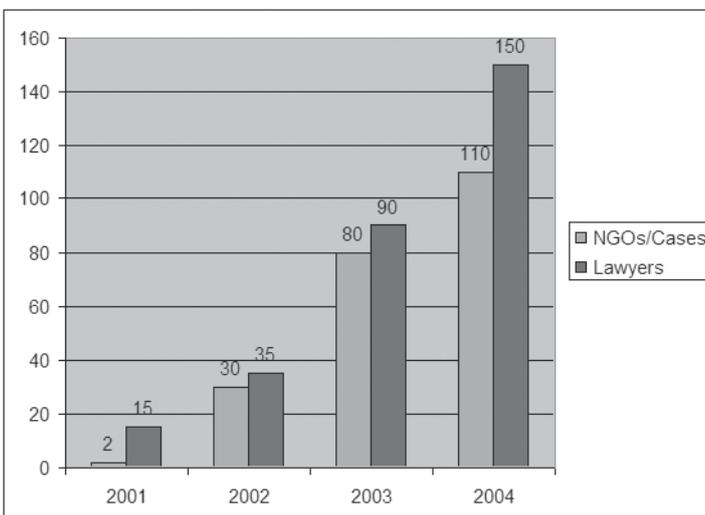
**We gathered a highly credible network of support for the conference.** The conference was supported by several large São Paulo law firms. In addition, it was supported by:

- British Council São Paulo
- Centro de Estudos das Sociedades de Advogados (Law Firms Studies Center)
- Conectas Human Rights and Sur (Human Rights University Network)
- DPZ Propaganda (marketing/advertising firm)
- Pontifícia Universidade Católica Law School
- São Paulo Lawyers Institute
- Ford Foundation
- United Nations Foundation
- Universidade de São Paulo Law School
- U.S. Consulate General São Paulo

This mixture of support gave the conference a great deal of credibility among the Brazilian legal community.

**We created opportunities for local law firms to connect with international guests who understood pro bono work.** For instance, space was created in the agenda before the formal start of the conference for some of the sponsoring law firms to hold meetings to welcome the foreign delegations and to build connections. The Lawyers Association of São Paulo also held a special advance meeting with the foreign delegation and Brazilian NGOs.

### Growth of the Instituto Pro Bono



**A broad range of international guests strengthened the global credibility of the concept.** Speakers and panelists came from Brazil, the United States, Argentina, Chile, South Africa, Mexico, the United Kingdom and Hungary. They included prestigious speakers, such as the president of the Bar Association of the City of New York, deans of major law schools, representatives of international foundations and others.

**We offered practical sessions to teach about the concept.** The agenda included panels on how to organize a pro bono initiative inside of law firms and companies; the relationship between ethics and pro bono; pro bono and public interest law; and legal clinics and pro bono initiatives. A detailed agenda on the conference is available from Instituto Pro Bono for anyone considering organizing something similar.

The Pro Bono Seminar resulted in a significant increase in the number of volunteer lawyers and law firms and increased the effectiveness of pro bono work being done. It also resulted in the announcement by the national bar association of its intention to reduce regulatory barriers to pro bono service. The representative of the Brazilian Federal Bar Association concluded his statement saying he would work hard within the Federal Bar to legalize pro bono work in the whole country as well as to legalize pro bono work for individuals.

Furthermore, the participation of partners from top U.S. law firms stimulated Brazilian lawyers to introduce the pro bono culture into some of the top Brazilian law firms.

### Conclusion

Law represents the protection of the most important ethical and moral values in a society. Yet at times the law can assist injustice. Much has been said about the need to give the legal profession greater social relevance. Pro bono work promotes social relevance through volunteerism and solidarity among professionals, firms and civil society organizations in the defense of common interests.

It is important for lawyers to contribute to the discussion of ethics and pro bono. Anyone who intends to organize an organization such as IPB must discuss how pro bono activity can be a critical assistance in the development and implementation of social justice through legal activity and the fundamental ethics that underlie volunteerism and legal social responsibility.

A pro bono organization can increase the availability of legal services to NGOs and individuals exponentially. In that sense it

also creates new opportunities for the pursuit of justice. People and organizations are waiting for such support, and all over the world there are lawyers who would be willing to offer it—if only there were a structure that put volunteers and clients together.

But a pro bono institute is more than a service to link clients and volunteers. It not only makes efficient use of individual voluntary commitment, it actually *creates new commitments* by creating a new ethic, a new attitude within the profession. When this attitude is integrated into the profession, people will offer voluntary service who might never have previously thought to do so. Firms will support, encourage and

reinforce this volunteerism. Professional societies and universities will reinforce it even further. And more people will have access to justice.

The institutionalization of pro bono service is relevant beyond the legal profession as well. In some countries NGOs are assisted by pro bono accountants, pro bono financial consultants, pro bono fundraising professionals and much more. In these and other professions that can help people and organizations in need, if there is no institutionalized mechanism to promote pro bono service, a great opportunity is being missed. We hope that this tactical notebook will help you to find ways to seize that opportunity, wherever you are.

## **Appendix 1**

### **PRO BONO RESOLUTION**

On August 19, 2002, the São Paulo Chapter of the Brazilian Bar Association, by unanimous vote, resolved to regulate the activity designated “pro bono legal assistance” as follows:

Article 1 – Pro bono activities encompass legal assistance and consultancy activities and, on an exceptional basis, jurisdictional activities.

Sole paragraph – Any loss of suit fees shall revert to the entity benefiting from the services, by means of a donation from the lawyer or law firm performing the pro bono work.

Article 2 – The beneficiaries of pro bono work shall be nonprofit legal entities of the third sector that are recognized as such and proven devoid of financial resources to fund procedural, judicial or nonjudicial expenses.

Article 3 – Lawyers and law firms that perform pro bono work for the beneficiary entities defined in Article 2 shall not provide legal services in any sphere to companies or entities related to the beneficiaries for a period of two (2) years from the latest service provision; this prohibition shall extend to the individuals that are part of such companies or entities, whether in the capacity of officers, members of the decision-making council, partners or associates, as well as to entities that are directly or indirectly controlled by private economic groups, mixed capital groups or foundations.

Sole paragraph – The prohibitions stated in the main section of this article extend to all members of law firms performing pro bono work, including hired lawyers, service providers, even if no longer with the law firm.

Article 4 – Lawyers and law firms intending to engage in pro bono activities shall previously inform the Ethics and Discipline Panel of the purposes and scope of their activities, as well as forward to such panel a half-yearly report containing the following information: corporate name of the beneficiary entity, type of work to be performed, date of commencement and end of the work.

Sole paragraph – The Ethics and Discipline Panel may either determine filing of the report in the proper records or request clarifications, which shall be provided by the lawyers and law firms referred to in the main section of this article, even if outside the timeframes set out therein.

Article 5 - Pro bono work implies prior knowledge and consent on the part of the beneficiary entity with regard to the provisions of this resolution.

Article 6 – The rules of the Charter of the Brazilian Bar Association and Advocacy, the Brazilian Bar Association Code of Ethics and Discipline, and other resolutions dealing with publicity and advertising shall apply to pro bono work.

Session Hall, August 19, 2002

Carlos Miguel C. Aidar

**President**



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